

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA**

<b>ALONZO AUSTIN, Executor for</b>	)	
<b>Ruth H. Lewis, Estate,</b>	)	
	)	
<b>Plaintiff(s),</b>	)	
	)	
<b>vs.</b>	)	<b>Civil Action No.</b>
	)	<b>3:07-CV-138-MHT-WC</b>
<b>MODERN WOODMEN OF</b>	)	
<b>AMERICA,</b>	)	
<b>et al,</b>	)	
	)	
<b>Defendant(s).</b>	)	

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**MOTION TO DISMISS**

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Comes now the Defendant, Modern Woodmen of America (“Modern Woodmen”), and, pursuant to Rule 12(b)(6), Fed. R. Civ. P., moves that the Court dismiss Plaintiff’s claims against it on the grounds that the Complaint fails to state any claim upon which relief may be granted. As grounds therefor, Modern Woodmen shows as follows.

**INTRODUCTION**

Plaintiff’s Complaint attempts to draw Modern Woodmen into a controversy it is no part of. For more than ten years, Modern Woodmen has repeatedly asked Plaintiff to submit a required claim form to collect annuity proceeds to which he is

due. Plaintiff has refused to do so, apparently because he fears that the proceeds may be seized by a third party. Modern Woodmen ultimately paid the proceeds to the Alabama Treasurer's Office pursuant to the state's unclaimed property law and its desire to bring a resolution to the claim and cease the accrual of interest. Plaintiff may collect the annuity proceeds at any time by filing a claim with the Unclaimed Property Division of the Alabama State Treasury. In the meantime, Modern Woodmen respectfully requests that this Court dismiss Plaintiff's claims against it on Rule 12(b)(6) grounds.

### **ARGUMENT**

1. Plaintiff's Complaint alleges that Modern Woodmen wrongfully transferred funds owed Plaintiff as beneficiary of an annuity to the Alabama State Treasurer's Office. (See Complaint at ¶ 26). The Complaint alleges a litany of counts against all the named defendants, including Modern Woodmen. (See id. at ¶ 28-43). Understanding the reasons behind the Complaint's failure to state any valid cause of action against Modern Woodmen requires a brief summary of the facts surrounding the subject annuity.

2. On February 6, 1991, Ruth H. Lewis completed an application for a Modern Woodmen annuity certificate with proceeds payable on her death. (See application attached as Ex. 1). She named the Plaintiff, Alonzo Austin, as beneficiary,

identifying him as her cousin. (Id.). Modern Woodmen subsequently issued Certificate 6737108 to Ms. Lewis. (See affidavit of Judy Gackle, attached as Ex. 2, at ¶ 2).

3. On February 2, 1993, Ruth Lewis executed a Durable General Power of Attorney naming Alonzo Austin her Attorney-in-Fact. (See Power of Attorney attached as Ex. 3).

4. On April 28, 1993, the Probate Court of Macon County, Alabama, found that Ruth Lewis was legally incompetent and named Juanita Upshaw as her guardian and conservator. (See Letters of Conservatorship and Guardianship attached as Ex. 4).

5. On June 4, 1993, Juanita Upshaw filed a petition with the Macon County Probate Court to set aside the power of attorney granted to Alonzo Austin, arguing that Lewis was not mentally competent at the time and executed it under duress and coercion. (See petition attached as Ex. 5).

6. A hearing on the petition was held on June 29, 1993. (See Probate Court of Macon County Order of July 6, 1993, attached as Ex. 6). Austin appeared pro se. (Id.). Upshaw appeared and was represented by attorney Deborah Hill Biggers. (Id.). Ruth Lewis was also present. (Id.). Upshaw presented evidence from Dr. Robert Story that Lewis had been mentally incompetent for at least a year, beginning in June

1992. (Id.). This period of incompetency included the date when Lewis gave the General Power of Attorney to Austin in February 1993. (Id.). Austin stated at the hearing that he agreed with the court's action naming Upshaw as guardian and conservator of Ruth Lewis and that he did not oppose setting aside and declaring void the February 2, 1993 Power of Attorney. (Id.).

7. On July 6, 1993, the Probate Court of Macon County entered an order declaring the February 2, 1993 Power of Attorney null and void. (See Ex. 6). The order further provided, in pertinent part:

- (5) Any and all personal property, documents, keys and other items belonging to or pertaining to Ruth H. Lewis, in the possession of Alonzo Austin, shall be turned over to Guardian and Conservator, Juanita K. Upshaw, within seven (7) days from the date of this Order; and
- (6) Alonzo Austin shall engage in no conduct or actions to interfere with the duly authorized powers of Juanita K. Upshaw as Guardian and Conservator of Ruth H. Lewis.

(Id.).

8. Ruth Lewis died on November 26, 1994. (See death certificate attached as Ex. 7).

9. Thereafter, at some point Juanita Upshaw became aware of Ruth Lewis' annuity naming Alonzo Austin as beneficiary. Upshaw inquired about the annuity by letter to Modern Woodmen dated July 10, 1996. (See letter attached as Ex. 8).

Modern Woodmen responded that Upshaw's letter was the first notice it had received of Ruth Lewis' death, and that Austin, as the named beneficiary under the Certificate, would be required to submit a completed claim form in order to disburse the proceeds. (See July 17, 2006 letter attached as Ex. 9). Upshaw wrote back to Modern Woodmen and argued that Lewis was not competent when she named Austin as the beneficiary. (See August 14, 2006 letter attached as Ex. 10). Modern Woodmen concluded from its investigation, which included an interview with the agent who sold Lewis the annuity, that there was no reason to question Lewis' competency at the time she named Austin as beneficiary in February 1991. (See August 22, 2006 letter attached as Ex. 11).

10. As the years passed, Modern Woodmen sent several letters to Austin requesting that he submit the required claim form in order to release the annuity proceeds to him. (See attached letters dated Dec. 23, 1996 (Ex. 12); Aug. 24, 1998 (Ex. 13); July 26, 2001 (Ex. 14); Aug. 8, 2003 (Ex. 15); Sep. 4, 2003 (Ex. 16); Dec. 15, 2003 (Ex. 17); Sep. 17, 2004 (Ex. 18); May 19, 2005 (Ex. 19)). Austin wrote multiple letters in reply, stating that he could not do so based on the above legal circumstances. (See attached letters dated Aug. 21, 2003 (Ex. 20); July 22, 2005 (Ex. 21); Aug. 3, 2005 (Ex. 22)).

11. Finally, on July 15, 2005, after the annuity proceeds had nearly doubled due to accrued interest, Modern Woodmen advised Austin that if he did not submit a claim form it would transfer the proceeds to the Alabama State Treasurer's Office pursuant to the Alabama Uniform Disposition of Unclaimed Property Act. (See letter attached as Ex. 23). Austin did not reply and the proceeds were transferred as described. (See Ex. 2).

12. Modern Woodmen's transference of the funds was made in compliance with the Alabama Uniform Disposition of Unclaimed Property Act at Ala. Code § 35-12-70 et seq. (See affidavit of Judy Gackle, Ex. 2). Pursuant to § 35-12-72(a)(10), property in the form of amounts due under a policy of life insurance are to be presumed abandoned if unclaimed by the apparent owner within three years after the obligation to pay arose. Under § 35-12-77, "the holder of property presumed abandoned", upon filing a report required by § 35-12-76, "shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report as unclaimed[.]"

13. Plaintiff's remedy to collect the proceeds he is due is to make a claim for the funds from the Unclaimed Property Division of the Alabama State Treasury under the procedures provided in Ala. Code § 35-12-83.

### **CONCLUSION**

As the attached affidavit and background documents reveal, Modern Woodmen is an innocent bystander to the events described in the Complaint. Moreover, the Complaint does not state any valid cause of action against Modern Woodmen. Plaintiff may collect the proceeds to the annuity at any time from the State Treasury. Thus, Modern Woodmen respectfully requests that this Court dismiss each and every claim asserted against it in Plaintiff's Complaint.

Respectfully,

/s/ Charles D. Stewart  
Charles D. Stewart (ASB-7467-T63C)  
Attorney for Defendant, Modern Woodmen  
of America

OF COUNSEL:

SPAIN & GILLON, L.L.C.  
2117 2nd Avenue North  
Birmingham, AL 35203  
(205) 328-4100  
(205) 324-8866 (fax)  
E-mail: [cds@spain-gillon.com](mailto:cds@spain-gillon.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2007, a copy of the foregoing pleading was electronically filed with the Clerk of the Court using the Electronic Filing System which sends notification of such filing to counsel of record in this cause and that those not registered with electronic notification have been served by U.S. Mail.

Alonzo Austin  
1321 Oliver-Carlis Road  
Tuskegee, AL 36083

/s/ Charles D. Stewart  
Of Counsel



MODERN WOODMEN OF AMERICA

Rock Island, Illinois 61201

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## APPLICATION FOR ANNUITY

A Fraternal Benefit Society

## SECTION C — PROPOSED ANNUITANT (Please Print)

1a. <u>Lewis</u> <u>Arthur</u> <u>Naperville</u>		Home Office Use <b>6737108</b>	
Last Name First Name Middle Name			
<input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input checked="" type="checkbox"/> Divorced <input type="checkbox"/> Separated			
b. If Proposed Annuitant is Under Age 16:		Applicant's Social Security No.	
Applicant's Name (First, Middle, Last)			
2. Proposed Annuitant's Address: <u>1401 West Hwy Tuskegee</u>		State <u>Al.</u> Zip Code <u>36083</u>	
(Mailing Address if Different) <u>P.O. Box 265 Tuskegee, Al.</u>		State <u>Al.</u> Zip Code <u>36083</u>	
3. Membership is applied for in Camp No. <u>16164</u>		4 a. Is Proposed Annuitant now a member of this Society? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		b. If yes, give certificate number.	
5. Sex <u>M</u> Birthdate <u>4/10-22-18</u> Register Date <u>03-01-91</u> Age on Reg. Date <u>72</u> Birth State <u>Al</u> Proposed Annuitant's Social Security No. <u>424-24-6793</u> Residence Telephone <u>205-727-1864</u>			

## SECTION D — ANNUITY PLAN INFORMATION

1. <input checked="" type="checkbox"/> Flexible Premium Annuity with Income to begin at Age <u>82</u>		Expected Annual Premium (Includes WP if applied for) <u>\$ 10,000.00</u>		Plus One Sum Payment if Any <u>\$</u>		<input type="checkbox"/> Waiver of Premium (Complete Sections E and F)	
2. <input checked="" type="checkbox"/> Single Premium Deferred Annuity with Single Premium of <u>\$10,000</u>		with Income to begin at Age <u>82</u>					
3. Single Premium Immediate Annuity with Single Premium of <u>\$</u>		Income Payable <input type="checkbox"/> A <input type="checkbox"/> S <input type="checkbox"/> Q <input type="checkbox"/> M					
a. <input type="checkbox"/> Single Life Annuity with (Check one) <input type="checkbox"/> Installment Refund OR <input type="checkbox"/> 10 Yrs. Certain OR <input type="checkbox"/> No Period Certain							
b. <input type="checkbox"/> Joint and Survivor Annuity with (1.) <input type="checkbox"/> Full to Survivor OR <input type="checkbox"/> 2/3 to Survivor (2.) <input type="checkbox"/> 10 Yrs. Certain OR <input type="checkbox"/> No Period Certain							
(3.) Joint Annuitant (Please Print) Last Name First Name Middle Name		Sex M F		Date of Birth Month Day Year		Social Security No.	
Relationship to Annuitant							
4. Is the annuity applied for intended to be a Tax Qualified Plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, complete Question 5.							
5. Complete only for Tax Qualified Plans: I represent that I am eligible for participation in the Tax Qualified Plan requested below and I request that any certificate issued pursuant to this application shall be appropriately endorsed to be nontransferable and to conform to the requirements of the Internal Revenue Code, Regulations, or published Revenue Rulings. <input type="checkbox"/> IRA <input type="checkbox"/> IRA ROLLOVER <input type="checkbox"/> TSA <input type="checkbox"/> HR-10							
6. Premium Payment Frequency (Check One) <input type="checkbox"/> ABC <input type="checkbox"/> A <input type="checkbox"/> S <input type="checkbox"/> Q <input type="checkbox"/> GA <input type="checkbox"/> SAP <input checked="" type="checkbox"/> SINGLE							
If ABC (Specify) <input type="checkbox"/> New ABC, Complete Page 10 OR <input type="checkbox"/> Add to Existing ABC. (Give Certificate Number)							
7. Do you intend to replace, change or borrow on any existing life or annuity plan because of this application? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, explain.							
8. Principal Beneficiary (Please Print) <u>ALONZA AUSTIN</u> Relationship to Annuitant <u>COUSIN</u>				Contingent Beneficiary (Please Print) Relationship to Annuitant			
(Equally to the surviving principal beneficiaries unless otherwise indicated.)				(If no principal beneficiary survives, then equally to the surviving contingent beneficiaries unless otherwise indicated.)			
Mode of Settlement: <input checked="" type="checkbox"/> Deposit at Interest <input type="checkbox"/> One Sum <input type="checkbox"/> Other (Specify in Special Request Section)							
(Unless otherwise specifically requested, the beneficiaries shall have the right to change the mode of settlement.)							

SPECIAL REQUEST SECTION  
 PLEASE send interest check  
 MONTHLY, STARTING 3-1-91  
 send form to sign for  
 WITHHOLDING EXEMPTION

## HOME OFFICE CORRECTION SECTION (EXCEPT IN WEST VIRGINIA)

SEE D 1, 2

EXHIBIT

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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA**

<b>ALONZO AUSTIN, Executor for</b>	)	
<b>Ruth H. Lewis, Estate,</b>	)	
	)	
<b>Plaintiff(s),</b>	)	
	)	
<b>vs.</b>	)	<b>Civil Action No.</b>
	)	<b>3:07-CV-138-MHT-WC</b>
<b>MODERN WOODMEN OF</b>	)	
<b>AMERICA,</b>	)	
<b>et al,</b>	)	
	)	
<b>Defendant(s).</b>	)	

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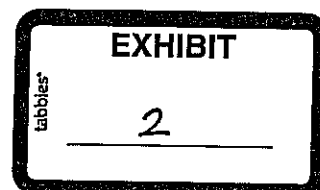
**AFFIDAVIT OF JUDY GACKLE**

---

STATE OF ILLINOIS        )  
                                  )  
ROCK ISLAND COUNTY    )

Before me, the undersigned authority in and for said county in said state, personally appeared Judy Gackle, who, being known by me and first duly sworn and placed under oath, deposes and says as follows:

1. My name is Judy Gackle. I am Claim Department Manager for Modern Woodmen of America ("Modern Woodmen"). In that capacity, I have personal



knowledge of the matters contained in this Affidavit and I have authority to make this Affidavit.

2. The annuity at issue in Mr. Austin's Complaint, Certificate 6737108, became payable in 1994 upon the death of the annuitant, Ruth H. Lewis. Mr. Austin was the named beneficiary on the Certificate.

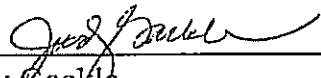
3. Since learning of Ms. Lewis' death, Modern Woodmen sent no fewer than eight letters to Mr. Austin asking him to submit a required claim form in order to collect the proceeds of the Certificate. On at least three occasions, he refused in writing to do so.

4. By letter dated July 15, 2005, Modern Woodmen advised Mr. Austin that, since he had not provided the required forms to process his claim, it had no alternative but to treat the proceeds as unclaimed property according to the Alabama Uniformed Disposition of Unclaimed Property Act, Ala. Code § 35-12-70, et seq., and pay the unclaimed funds to the State Treasurer's Office. The letter gave Mr. Austin thirty days to respond before any action was taken. Mr. Austin did not respond in the thirty-day period and the funds, in the amount of \$23,136.45 were paid to the State Treasurer's Office on October 31, 2005.

5. Modern Woodmen's transference of the annuity proceeds was not made with malice or to deprive Mr. Austin of any right to which he may be entitled. To the

contrary, Modern Woodmen retained the proceeds for almost ten years after they were to be presumed abandoned under Alabama law. The transference was made pursuant to Modern Woodmen's obligation under the Unclaimed Property Act and its desire to bring a resolution to Mr. Austin's claim and cease the accrual of interest on the annuity proceeds.

FURTHER THE AFFIANT SAYETH NOT.

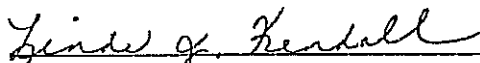
  
\_\_\_\_\_  
Judy Gackle

STATE OF ILLINOIS            )  
  )  
ROCK ISLAND COUNTY        )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Judy Gackle, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of this instrument, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 15th day of March, 2007.

[S E A L] 

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: March 2, 2008

STATE OF ALABAMA

COUNTY OF MACON

DURABLE GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a DURABLE GENERAL POWER OF ATTORNEY, that I, RUTH H. LEWIS, whose address is P.O. Box 265, 1401 Martin Luther King Highway, Tuskegee, AL 36083, do hereby make, constitute and appoint my cousin, ALONZO AUSTIN whose mailing address is Rte. 3, Box 365, Tuskegee, AL 36083, my true and lawful Attorney-in-Fact, for me and in my name, place and stead, and on my behalf and for my use and benefit and to perform the following duties, to wit:

To exercise or perform any act, power, duty, right or obligation whatsoever that I now have, or may hereafter acquire the legal right, power or capacity to exercise or perform, in connection with, arising from, or relating to any person, item, transaction, thing, business property, real or personal, tangible or intangible, or whatsoever.

To request, ask, demand, sue for, recover, collect, receive and hold and possess all such sums of money, debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pension and retirement benefits, insurance benefits and proceeds, any and all documents of title, choses in action, personal and property rights, and demands whatsoever, liquidated or unliquidated, as now are, or shall hereafter become, owned by me, or due, owing, payable, or belonging to me, or in which I have or may hereafter acquire interest, to have, use and take all lawful means and equitable and legal remedies, procedures and writs in my name for the collection and recovery thereof, and to adjust, sell, compromise and agree for the same, and to make, execute and deliver for me, on my behalf, and in my name all endorsements, acquittances, releases, receipts or other sufficient discharges for the same;

To lease, purchase, exchange, and acquire, and to agree, bargain and contract for the lease, purchase, exchange and acquisition of and to accept, take, receive and possess any real or personal property whatsoever, tangible or intangible, or interest thereon, on such terms and conditions, and under such covenants, as my Attorney-in-Fact shall deem proper;

I grant to my said Attorney-in-Fact full power and authority to do, take and perform all and every act and thing whatsoever

EXHIBIT

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DURABLE GENERAL POWER OF ATTORNEY:  
RUTH H. LEWIS TO ALONZO AUSTIN

PAGE TWO OF TWO PAGES

requisite, proper or necessary to be done, in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my said Attorney-in-Fact, or his substitute shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers herein granted;

This instrument is to be construed and interpreted as a DURABLE AND GENERAL POWER OF ATTORNEY. The enumeration of specific items, rights, acts or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to my said Attorney-in-Fact.

The rights, powers and authority of my said Attorney-in-Fact herein granted shall commence upon my signing this Power of Attorney and, in addition, said Power of Attorney shall be in full force and effect upon the disability, incompetency or incapacity of the said principal, RUTH H. LEWIS, and such rights, powers and authority shall remain in full force and effect until the death of the principal, RUTH H. LEWIS. Any action taken in good faith pursuant to the foregoing authority without actual knowledge of my death shall be binding upon me, my heirs, assigns and personal representatives.

Done this 2nd day of February, 1993.

Ruth H. Lewis  
RUTH H. LEWIS

STATE OF ALABAMA }

COUNTY OF MACON }

I, ALBERT C. BULLS III, a Notary Public in and for said County in said State, hereby certify that RUTH H. LEWIS, whose name is signed to the foregoing DURABLE GENERAL POWER OF ATTORNEY and who is known to me, acknowledge before me on this day that, being informed of the contents of said DURABLE GENERAL POWER OF ATTORNEY, he executed the same voluntarily on the day the same bears date.

Given under my hand this 2nd day of February 1993.

Albert C. Bulls III  
ALBERT C. BULLS III, Notary Public  
MY COMMISSION EXPIRES: 4/7/94

THIS INSTRUMENT WAS  
PREPARED BY  
ALBERT C. BULLS III  
P. O. BOX 1233  
TUSKEGEE INST., AL 36088-1233  
TELEPHONE 205-727-1074

IN THE PROBATE COURT OF MACON COUNTY, ALABAMA

IN RE: The Conservatorship And )  
Guardianship Of Ruth H. )  
Lewis, An Incapacitated )  
Person. )

W. ... 10 1993

LETTERS OF CONSERVATORSHIP AND GUARDIANSHIP

THE STATE OF ALABAMA  
MACON COUNTY

PROBATE COURT  
April 27 , 1993

BE IT REMEMBERED, AND MADE KNOWN TO ALL WHOM IT MAY CONCERN:

That on the application of The Conservator and Guardian named below, to my said Court, I have caused these LETTERS OF CONSERVATORSHIP AND GUARDIANSHIP to issue in favor of the said Juanita Upshaw , Conservator And Guardian, in and upon the Estate, real and personal property of, RUTH H. LEWIS , an incapacitated person, and, in every case which occasion may require, the said Conservator And Guardian is authorized and directed to exercise all powers and duties in accordance with the Alabama Uniform Guardianship And Protective Proceedings Act; as the lawful Guardian And Conservator of the said incapacitated Ward, Ruth H. Lewis.

Witness my hand and official seal this 28 April , 1993.

Alfonza Menefee  
ALFONZA MENEFEE, Judge Of Probate  
MACON County, Alabama

THE STATE OF ALABAMA  
MACON COUNTY

I, Alfonza Menefee , Judge Of Probate, hereby certify that the foregoing is a true and correct copy of Letters Of Conservatorship and Guardianship, issued in favor of JUANITA UPSHAW , as guardian

EXHIBIT

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of Ruth H. Lewis, as same appears of record in my office.

Witness my hand and official seal this date 28 April, 1993.

Alfonza Menefer  
ALFONZA MENEFER, Judge Of Probate  
MACON County, Alabama



EXHIBIT

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IN THE PROBATE COURT OF MACON COUNTY, ALABAMA

IN RE: The Conservatorship And )  
Guardianship of Ruth H. )  
Lewis, An Incapacitated )  
Person. )

RECEIVED

JUN 04 1993

JUDGE OF PROBATE

PETITION TO SET ASIDE DURABLE POWER OF ATTORNEY

Comes now Juanita Upshaw the duly appointed Guardian and Conservator of Ruth H. Lewis, and petitions this Honorable Court to set aside the Durable General Power of Attorney granted to Alonzo Austin on February 2, 1993 and declare it null and void and state the following grounds in support thereof:

1. ~~Ruth H. Lewis was not mentally competent to appoint Alonzo Austin her Attorney-in-Fact on February 2, 1993. ( See attached Exhibit "A")~~
2. Ruth H. Lewis executed the February 2, 1993 Power Of Attorney under duress and coercion, perpetrated by Alonzo Austin.
3. Alonzo Austin, acting under the color of authority of said Power of Attorney has taken unreasonable advantage of Ruth H. Lewis, has breached his alleged fiduciary duty of such Power of Attorney and has converted the assets of the estate of Ruth H. Lewis, to his own personal use.
4. That the subsequent appointment of Petitioner, Juanita Upshaw as Guardian and Conservator over the Estate of Ruth H. Lewis on April 28, 1993, should be declared to supersede the Power of Attorney given to Alonzo Austin on February 2, 1993, for the reasons stated herein.

Wherefore, Petitioner requests that Alonzo Austin be ordered to appear before this court at a hearing, to show cause why the relief requested herein should not be granted, and Petitioner further requests that Alonzo Austin file prior to said hearing, a written accounting of how he has managed the affairs and assets of Ruth H. Lewis since February 2, 1993.

Petitioner ultimately requests that after said hearing, this court issue an order declaring said February 2, 1993 Power of Attorney void and setting it aside, prohibiting Alonzo Austin from having any further authority over the Estate of Ruth H. Lewis, an

EXHIBIT

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incapacitated person.

*Deborah Hill Biggers*

DEBORAH HILL BIGGERS  
Attorney To Juanita Upshaw  
113 East Northside  
Tuskegee, AL 36083

STATE OF ALABAMA

COUNTY OF MACON

VERIFICATION

I, Juanita Upshaw, being duly sworn, depose and say that I am a resident citizen of Macon County, in the State of Alabama. I am the Petitioner and duly appointed Guardian and Conservator over the Estate of Ruth H. Lewis. I have read over the above Petition and the facts stated therein are true and correct according to my information, knowledge, and belief.

*Juanita L. Upshaw*  
JUANITA UPSHAW, Petitioner

Sworn to and subscribed before me this 26<sup>th</sup> day  
of May 1993.

*Mary B Shaw Muller*  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 09/18/93

EXHIBIT

IN THE PROBATE COURT OF MACON COUNTY, ALABAMA

IN RE: The Conservatorship And       )  
Guardianship of Ruth H.        )  
Lewis, An Incapacitated        )  
Person.                                )

ORDER VOIDING POWER OF ATTORNEY GIVEN BY  
RUTH H. LEWIS TO ALONZO AUSTIN

On April 28, 1993, this Court, following a hearing, found that Ruth H. Lewis was incapable of handling her own affairs, and pursuant to the Alabama Uniform Guardianship and Protective Proceeding Act, appointed Juanita K. Upshaw as the Conservator and Guardian over the estate of Ruth H. Lewis.

In her capacity of Guardian and Conservator, Juanita K. Upshaw was made aware that on February 2, 1993 Ruth H. Lewis had given a Durable Power Of Attorney to Alonzo Austin, even though Ms. Lewis was mentally incompetent at the time she executed the February 2, 1993 Power Of Attorney.

In order to protect the interest and estate of Ruth H. Lewis, her duly appointed Conservator and Guardian filed a Petition to Set Aside and declare void the February 2, 1993 Power Of Attorney.

A hearing on said petition was held on June 29, 1993, following notice to all interested parties.

Mr. Alonzo Austin appeared pro se; Ms. Juanita K. Upshaw appeared and was represented by her attorney, Deborah Hill Biggers; the ward, Ruth H. Lewis, was present, as well as other interested family members of Ruth H. Lewis.

The Guardian presented medical evidence from Dr. Robert Story that ward, Ruth H. Lewis has been mentally incompetent for at least a year, from June 1992 which includes February 2, 1993 when said Durable Power Of Attorney, appointing Alonzo Austin her Attorney-In-Fact was executed.

Further testimony was presented by Alonzo Austin, stating that he agreed with this Court's action appointing Juanita K. Upshaw as ward's Guardian and Conservator, and that he

EXHIBIT

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*EXHIBIT* *B*

did not oppose the setting aside and declaring void, the February 2, 1993 Power Of Attorney.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

- (1) The February 2, 1993 Durable Power Of Attorney executed by Ruth H. Lewis, appointing Alonzo Austin her Attorney-In-Fact, is hereby declared null and void, and he is to exercise no further authority, powers or duties, pursuant to said voided Durable Power Of Attorney;
- (2) Ruth H. Lewis was mentally incompetent to execute said Durable Power Of Attorney on February 2, 1993;
- (3) Said February 2, 1993 Durable Power Of Attorney is null and void due to this Court's subsequent appointment on April 28, 1993, of Juanita K. Upshaw as Guardian and Conservator of Ruth H. Lewis, an incapacitated person, pursuant to the Alabama Uniform Guardianship and Protective Proceeding Act;
- (4) That Alonzo Austin shall immediately convey title of ward's vehicle, to the Estate of Ruth H. Lewis, and provide proof of same to this Court and to Guardian;
- (5) Any and all personal property, documents, keys and other items belonging to or pertaining to Ruth H. Lewis, in the possession of Alonzo Austin, shall be turned over to Guardian and Conservator, Juanita K. Upshaw, within seven (7) days from the date of this Order; and
- (6) Alonzo Austin shall engage in no conduct or actions to interfere with the duly authorized powers of Juanita K. Upshaw as Guardian and Conservator of Ruth H. Lewis.

LET A COPY OF THIS ORDER BE SERVED ON ALL INTERESTED PARTIES.

DONE THIS 6 DAY OF July, 1993.

THE STATE OF ALABAMA  
MACON COUNTY  
the foregoing is hereby certified as true and correct  
copy of the paper or instrument of which this is a  
true and correct copy as the same appears in my office.

Witness my hand and seal this 6 day of  
July 1993  
Alfonza Memmefee  
Judge of Probate

Alfonza Memmefee  
ALFONZA MEMMEE  
Macon County Probate Judge

This is a true and exact copy of the record on file with the  
Macon County Health Department.

*Wanda D. W...*  
Signature of Local Registrar

December 8, 1994  
Date of Issue

W. WARREN JUL 29 1996

# ALABAMA CERTIFICATE OF DEATH

Country File Number		State File Number 101	
1. DECEASED—NAME First Middle Last (Type last name of capital)		2. DATE OF DEATH (Month, Day, Year)	
Ruth Harkless LEWIS		November 26, 1994	
3. COUNTY OF DEATH		4. CITY, TOWN, OR LOCATION OF DEATH AND ZIP CODE	
Macon		Tuskegee 36083	
5. INSIDE CITY LIMITS (Specify Yes or No)		6. PLACE OF DEATH—HOSPITAL OR OTHER INSTITUTION (If not in home, give street and number)	
No		V.A. Medical Center	
7. IF HOSPITAL (Specify Inpatient, ER or Outpatient, DOA)		8. OF HISPANIC ORIGIN (Specify Yes or No) If Yes, Specify Cuban	
ER		No	
9. RACE (Specify American Indian, Black, White, etc.)		10. SEX (Specify Male or Female)	
Black		Female	
11. AGE (Specify in Years, Months, Days, Hours, Mins.)		12. DATE OF BIRTH (Month, Day, Year)	
76 yrs.		October 22, 1918	
13. DECEASED'S SOCIAL SECURITY NUMBER		14. DECEASED'S MARITAL STATUS (Specify Married, Never Married, Widowed, Divorced)	
424-24-6993		Widowed	
15. EDUCATION (Specify ONLY highest grade completed below)		16. SURVIVING SPOUSE (If sole, give maiden name)	
Elementary or High School (K-12)		No	
17. STATE OF BIRTH (If not in USA, specify country)		18. RESIDENCE—STATE	
Alabama		Alabama	
19. INSIDE CITY LIMITS (Specify Yes or No)		20. STREET AND NUMBER	
Yes		1305 MLK Highway	
21. INFORMANT'S Name and Address		22. CITY, TOWN, OR LOCATION AND ZIP CODE	
Mrs. Juanita K. Upshaw-P.O. Box 275-Tuskegee Inst., AL 36087		Tuskegee Inst. 36087	
23. USUAL OCCUPATION (Give kind of work done during most of working life even if retired)		24. KIND OF BUSINESS OR INDUSTRY	
Teacher		Geneva County School System	
25. FATHER—NAME First Middle Last		26. MOTHER—NAME First Middle Last	
Amos Harkless		Lanie Robinson	
27. DISPOSITION OF BODY (Specify Burial, Cremation, Medical, Donated, Hospital, Other)		28. DATE OF DISPOSITION	
Burial		Dec. 3, 1994	
29. CEMETERY OR CREMATORY—Name		30. LOCATION—(City or Town—State)	
Damasus		Hardaway, AL	
31. FUNERAL HOME—Name and Address		32. FUNERAL DIRECTOR—Signature	
Peoples Funeral Home-500 Fonville St.-Tuskegee, AL 36083		H. E. Bentley	
33. DATE SIGNED BY FUNERAL DIRECTOR		34. DATE SIGNED (Month, Day, Year)	
Dec. 7, 1994		December 7, 1994	
35. TIME AND DATE OF DEATH		36. DATE AND TIME PROCLAIMED DEAD (For Coroner/ME use only)	
Nov. 26, 1994 @ 8:45pm		Nov. 26, 1994 @ 8:45pm	
37. NAME AND TITLE OF PERSON WHO COMPLETED CAUSE OF DEATH (Item 48)		38. ADDRESS OF PERSON WHO COMPLETED CAUSE OF DEATH (Item 49)	
H. E. Bentley, Coroner-Macon County		500 Fonville Street-Tuskegee, AL 36083	
39. REGISTRAR—Signature		40. DATE FILED (Month, Day, Year)	
Wanda D. W...		December 8, 1994	

## MEDICAL CERTIFICATION

41. PART I. Enter the disease, injury, or condition that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or brain failure. LIST ONLY ONE CAUSE ON EACH LINE.		APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH	
IMMEDIATE CAUSE (Final disease or condition resulting in death) → Heart Attack			
DUE TO (OR AS A CONSEQUENCE OF)			
DUE TO (OR AS A CONSEQUENCE OF)			
DUE TO (OR AS A CONSEQUENCE OF)			
42. PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.		43. WAS THERE A PREGNANCY IN LAST 42 DAYS? (Specify Yes, No, or Unknown)	
44. MANNER OF DEATH (Specify: Accidental, Homicide, Suicide, Undetermined Circumstances, Pending Investigation, Natural Cause)		45. AUTOPSY (Specify Yes or No)	
Natural Cause		No	
46. HOW INJURY OCCURRED (Enter nature of injury in Item 43, Part I or Item 47, Part II)		47. DATE OF INJURY (Month, Day, Year)	
48. INJURY AT WORK (Specify Yes or No)		49. PLACE OF INJURY (Specify at home, farm, street, factory, office building, etc.)	
50. LOCATION OF INJURY (Street or R.F.D. No., City or Town, State)		51. DATE OF DEATH (Month, Day, Year)	

EXHIBIT

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Juskegee, Ala. 36083-0265  
P.O. Box 830265  
July 10, 1996

W. WARREN JUL 15 1996

Modern  
Woodmen  
of America,

1701 1st Ave.

P.O. Box 2005  
Rock Island, Ill. 61204-2005

To whom this may concern:  
I wrote to Mr Robert L. Wilkerson 3-27-96  
2480 Flea Hop Rd.  
Eclectic, Ala. 36024 (Agent)  
Haven't heard from him. This letter  
stated as follow:

Certificate 6737108  
Register Date 3-1-91  
Ruth Harkless Lewis  
P.O. Box 265  
Juskegee, Ala. 36083

Dear Mr. Wilkerson:  
Ruth H. Lewis (deceased) November  
26, 1994. I am the niece of Mrs Lewis

EXHIBIT

tabbies

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Juanita K. Upshaw who was her Guardian,  
Conservator. Now the Administrator over  
her Estate.

W. WARREN JUL 15 1996

May I please hear from you concerning  
Mrs Ruth H. Lewis' Certificate 6737108

Register Dated 3-1-91

Ending Account Value

Death Benefit

Dated 2-28-96

Amount \$12,326.54

as of 3-01-96

Thank you;

Sincerely Juanita K. Upshaw  
Administrator of Ruth  
Harkless Lewis Estate.

P.S. No response  
from Mr. Wilkerson.

July 17, 1996

Ms. Juanita K. Upshaw  
PO Box 830265  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS - CERTIFICATE 6737108

Your letter was the first notice we had received of Ruth Lewis' death. Please convey our sincere sympathy to the survivors.

The beneficiary designation provides for the proceeds of Certificate 6737108 to be paid to Alonza Austin, cousin. May we ask you to have the beneficiary complete the enclosed Statement of Claimant. It should be returned promptly with a Certified Death Certificate having the Registrar's signature and seal of office and Certificate 6737108.

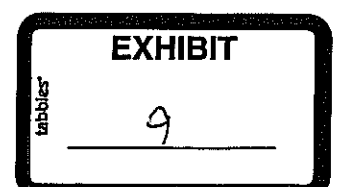
Since Certificate 6737108 is an Annuity, it will also be necessary for you to complete the enclosed election form. Please indicate which method of payment you wish. The election form will need to be signed and returned with the rest of the death proofs.

Immediate attention will be given to the claim when the above items are received and found to be in order. Do not hesitate to write if you have any questions.

Claim Department

bmb/jl

Encl: E1





P.O. Box 830265

August 14, 1996

Modern Standard of America:

1701 1st Ave,

P.O. Box 2005

Rock Island, IL, 61204-2005

W. WARREN

AUG 19 1996

Dear Mr Knoblock, FLMI, CLU, ALHC.  
 Again I say I have know knowledge as the  
 whereabouts of Alonza Austin.  
 Ruth H. Lewis was ill before this certificate  
 was taken out, as a matter fact (2) or more  
 years. Due to this statement and others as  
 off March 1, 1986 the last one I received.  
 It State Register Date 3-1-91 Certificate  
 6737108.

Since Ruth H. Lewis. Mother death 1982  
 left her (2) Two Sisters Florence H. Woods,  
 Carolyn Key my Mother, Florence H. Woods (Deceased)  
 12-2-91

Why would Mrs Lewis have someone not  
 related to her, hardly knew him, her Beneficiary?  
 She had one small Beneficiary as I know off  
 to her sister Florence H. Woods, and myself Juanita K.  
 Upshaw. I don't know how Alonza Austin did  
 I'm sure like he does everything else.

Sincerely, Juanita K. Upshaw

EXHIBIT

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August 22, 1996

Ms. Juanita K. Upshaw  
PO Box 830265  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Ms. Upshaw:

Prompted by your recent letter to our Society concerning your aunt, we have contacted our representative, Robert L. Wilkerson, to obtain his recollections regarding the writing of your aunt's annuity certificate. Based on the information provided by Mr. Wilkerson, we feel that the beneficiary designation made by Ms. Lewis on her annuity application dated February 6, 1991 reflects her intentions at that time.

According to Mr. Wilkerson, the named beneficiary, Alonza Austin was not present when the annuity application was completed. Mr. Wilkerson did not observe nor did he suspect that any individual was coercing Ms. Lewis into naming Mr. Austin as beneficiary on her certificate. Further, Mr. Wilkerson did not observe any behavior of Ms. Lewis that would have caused him to question her state of mind, based on his prior encounters with your aunt.

Based on the information which has been made available to us up to this point, it is our position that the named beneficiary, Alonza Austin, is entitled to the proceeds payable under Certificate 6737108. As such, we will initiate the process to locate Mr. Austin and provide the necessary claim forms to him.

If you have any additional information relevant to this claim, please forward it to our Home Office at your earliest possible convenience. If you would like to contact our office by phone, you may do so by calling the number listed below.

Sincerely,

Craig S. Knobloch, FLMI, CLU, ALHC  
Supervisor, Life and Health Claims  
Claim Department

ck/jl

EXHIBIT

tabbles

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December 23, 1996

Mr. Alonzo Austin  
1321 Oliver-Carlis Rd.  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Mr. Austin:

Thank you for the documentation which you recently provided to us regarding your association with Ms. Lewis. In addition to the information received from yourself, we also received notification from a member of Ms. Lewis' family informing us that she passed away in November 1994. On behalf of the members of our Society and our Board of Directors, may I extend to you our belated sympathy on the loss of Ms. Lewis.

At the time of Ms. Lewis' death, she held an annuity certificate with our Society, naming yourself as principal beneficiary. Under the terms of Ms. Lewis' certificate, you are entitled to receive the death proceeds from her annuity contract. Listed below you will find the steps which must be taken in order to have these proceeds paid to you.

The first document which needs to be completed is the "Claimant's Statement." Please see that page one of this form is completed in its entirety and that you sign it where indicated. Because Ms. Lewis' certificate was an annuity contract, it is also necessary that you complete the "Election for Non-Spouse Beneficiary Non-Qualified Annuity" form. In the top portion of this form, you will need to indicate how you wish to have the proceeds from this contract paid to you. In the lower portion of this form, you will need to indicate whether you wish to have taxes withheld from your payment, as well as certifying your Social Security Number. Both the upper and lower portions of this form need to be signed and dated by yourself.

Finally, it is necessary that Ms. Lewis' annuity certificate be surrendered to our Home Office along with the previously mentioned forms. In the event that her certificate is no longer available to you, we would ask that you please complete the enclosed "Waiver of Insurance Certificate." Please return all of the requested documents in the postage-paid envelope which I have provided.

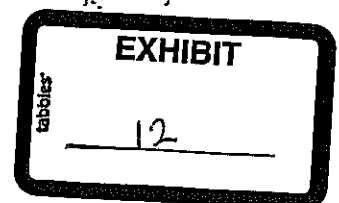
Again, I would like to extend to you our condolences on the loss of Ms. Lewis. Should you have any questions regarding the completion of the enclosed forms, do not hesitate to contact our Home Office.

Sincerely,

Craig S. Knobloch, FLMI, CLU, ALHC  
Supervisor, Life and Health Claims  
Claim Department

ck/jl

Encl: Form 22-0, E1, Election Form



August 24, 1998

Mr. Alonzo Austin  
1321 Oliver-Carlis Rd.  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Mr. Austin:

It has been some time since we have heard from you regarding the claim for Ruth Lewis. We are concerned that we have not received any of the forms which we requested.

Enclosed are additional forms in the event that our previous correspondence has been misplaced. Please complete the Claimant's Statement in its entirety. Your signature should be witnessed by a disinterested adult. Because Ms. Lewis' certificate was an annuity contract, it is also necessary that you complete the Election for Non-Spouse Beneficiary Non-Qualified Annuity form. On the top portion of the form, you will need to indicate how you wish to have the proceeds from this contract paid to you. On the lower portion of this form, you will need to indicate whether you wish to have taxes withheld from the payment, as well as certifying your Social Security Number. You should then sign and date both the upper and lower portions of the form.

Ms. Lewis' annuity certificate should be returned to the Home Office. If the certificate cannot be located, please complete the enclosed Waiver of Insurance Certificate. A pre-addressed envelope is enclosed for your convenience.

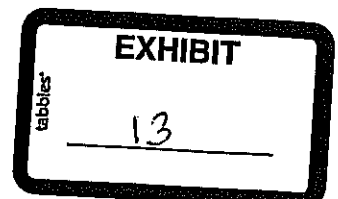
If you have any questions concerning the completion of these forms, please do not hesitate to contact our Home Office.

Sincerely,

Judy Gackle, FLMI  
Supervisor  
Claim Department

jg/jl

Encl: E1, Election Form, Form 22-0, Env.



July 26, 2001

Mr. Alonzo Austin  
1321 Oliver-Carlis Road  
Tuskegee, AL 36083

Dear Mr. Austin:

RUTH HARKLESS LEWIS - CERTIFICATE 6737108

It has been some time since we have heard from you regarding the claim for Ruth Lewis. As of this date, we have not received the forms necessary to process the claim.

Enclosed are additional forms in case the previous correspondence has been misplaced. Please complete the Claimant's Statement and have your signature witnessed by another adult. You should also complete the Election for Non-Spouse Beneficiary Non-Qualified Annuity form. Please return these forms with the annuity Certificate 6737108. If the certificate has been lost, the enclosed waiver will substitute.

A preaddressed envelope is enclosed. Since this claim has been pending for some time, we would like to make payment as soon as possible. If you need assistance, please contact us.

Sincerely,

*6737108 Ruth Lewis 370*

PS Form 3811, June 2000

Judy Gackle, FLMI, ALHC

10078, 10078

Supervisor  
Claim Department

jg/jjr

Mr. Alonzo Austin  
1321 Oliver-Carlis Road  
Tuskegee, AL 36083

Encl: 22E-1, 1673, 22-

Envelope

1. Article Addressed to:

☐ Yes

4. Restricted Delivery? (Extra Fee)

3. Service Type CERTIFIED MAIL

2106 4575 1535 0720



2. Article Number

11 YES, enter delivery address below:  
D. Is delivery address different from item 1?  
X *Alonzo Austin*  
C. Signature  
A. Recipient by (Please Print Name)  
B. Date of Delivery  
8-2-01

COMPLETE THIS SECTION ON DELIVERY

EXHIBIT

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*Touching lives. Securing futures.®*

August 8, 2003

Mr. Alonzo Austin  
1321 Oliver Carlis Rd.  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Mr. Austin:

As you are aware, it has been several years since we were notified of your cousin's death. To date, we have been unable to settle the claim.

You previously indicated that there were other matters that needed to be taken care of before you could settle this claim. Since this claim has been pending for some time, we would like to make settlement as soon as possible. May I ask you to let us know the current status of your situation and, if possible, we would like to furnish the necessary forms.

Do not hesitate to contact me if you have any questions.

Sincerely,

Laurie Schilling  
Claim Department

ls/lh

Life Insurance • Annuities • Investments • Member Benefits

1701 1st Avenue, P.O. Box 2005, Rock Island, Illinois 61204-2005, Phone 1-800-447-9811, [www.modern-woodmen.org](http://www.modern-woodmen.org)

Securities offered through MWA Financial Services, Inc.

EXHIBIT

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tabbles



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September 4, 2003

Mr. Alonzo Austin  
1321 Oliver-Carlis Rd.  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Mr. Austin:

Thank you for your recent reply.

May we ask you to complete the enclosed Claimant's Statement. Your signature should be witnessed by a disinterested person.

Certificate 6737108 must be returned. If the original certificate cannot be located, please complete the enclosed Waiver of Certificate which will substitute.

You should also complete the Election Form for Non-Spouse Beneficiary Non-Qualified Annuity. A postage-paid envelope has been provided for your convenience.

On July 15, 1996, we were notified of the Annuitant's death by her niece, Juanita Upshaw. Enclosed is a copy of that letter and our reply.

Your prompt attention to these requirements would be greatly appreciated.

Sincerely,

Mary Ann Behrens  
Claim Department

mb/nd

Encs.: E-1, 22-0, 1673, Envelope

EXHIBIT

tabbies

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*Touching lives. Securing futures.®*

December 15, 2003

Mr. Alonzo Austin  
1321 Oliver-Carlis Rd.  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Mr. Austin:

It has been several months since we last wrote to you in regard to the above Insured's claim. To date, we have not received the necessary forms in order to settle this claim.

The beneficiary designation provides for the proceeds of Certificate 6737108 to be paid to Alonzo Austin, cousin. Therefore, it will be necessary for you to complete the enclosed Claimant's Statement in full having your signature witnessed by a disinterested adult person. This form should be returned promptly along with Certificate 6737108. Should it be the certificate cannot be located, the enclosed Waiver of Certificate will substitute.

Since Certificate 6737108 is an annuity type contract, it will also be necessary for you to complete the enclosed annuity election form. Please select the option of your choice, complete the Notice of Withholding and sign and date the form.

Since this claim has been pending for some time, we would like to make payment before the end of the year. Payment cannot be made unless the information and forms requested to complete the claim have been received. Do not hesitate to write or contact us if you have any questions.

Sincerely,

Angela Zeitler  
Claim Department

az/nd

Encs.: E-1, 22-0, 1673, Envelope

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EXHIBIT

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September 17, 2004

COPY

Mr. Alonzo Austin  
1321 Oliver Carlis Rd.  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Mr. Austin:

It has been nearly 10 years since the death of Ruth Harkless Lewis. To date, we have not received the necessary forms in order to settle this claim.

The beneficiary designation provides for the proceeds of Certificate 6737108 to be paid to Alonzo Austin, cousin. Therefore, it will be necessary for you to complete the enclosed Claimant's Statement in full having your signature witnessed by a disinterested adult. This form should be returned along with Certificate 6737108. Should it be the certificate cannot be located, the enclosed waiver will substitute.

Since Certificate 6737108 is an annuity type contract, it will also be necessary for you to complete the enclosed Annuity Election Form. Please select the option of your choice, complete the Notice of Withholding portion and sign and date the form.

Since this claim has been pending for some time, we would like to make payment before the end of this year. Payment cannot be made unless the information and forms requested to complete the claim have been received. Please do not hesitate to contact us if you have any questions.

Sincerely,

Krista Brockett  
Claim Department

kb/km

**Certified Article Number**

7160 3901 9848 3315 2840

**SENDERS RECORD**

**EXHIBIT**

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May 19, 2005

COPY

Mr. Alonzo Austin  
1321 Oliver Carlis Rd.  
Tuskegee, AL 36083

RUTH HARKLESS LEWIS  
CERTIFICATE 6737108

Dear Mr. Austin:

It has been nearly 10 years since the death of Ruth Harkless Lewis. To date, we have not received the necessary forms in order to settle this claim.

The beneficiary designation provides for the proceeds of Certificate 6737108 to be paid to Alonzo Austin, cousin. Therefore, it will be necessary for you to complete the enclosed Claimant's Statement in full having your signature witnessed by a disinterested adult. This form should be returned along with Certificate 6737108. Should it be the certificate cannot be located, the enclosed waiver will substitute.

Since Certificate 6737108 is an annuity type contract, it will also be necessary for you to complete the enclosed Annuity Election form. Please select the option of your choice, complete the Notice of Withholding portion and sign and date the form.

Since this claim has been pending for some time, we would like to make payment before the end of this year. Payment cannot be made unless the information and forms requested to complete the claim have been received. Please do not hesitate to contact us if you have any questions.

Sincerely,

Krista Kaster  
Claim Department

kk/jjr

Certified Article Number

7160 3901 9848 9491 2766

SENDER'S RECORD

EXHIBIT

tabbies

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From: file of  
Alonzo Austin  
COPY

August 21, 2003  
1321 Oliver-Carlis Rd.  
Tuskegee, AL 36083  
(334) 727-5476

Attn: Laurie Schilling  
Claim Department-Life Claims  
Modern Woodmen Of America  
P.O. Box 2005  
Rock Island, IL 61204-9984

Via certified mail

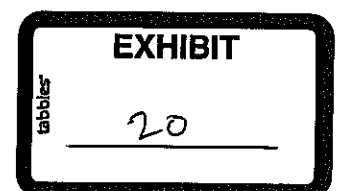
Dear Ms. Schilling  
Re: Ruth Harkless Lewis Certificate 6737108

Thank you for your patience and respectful cooperation. All matters concerning Ms. Lewis's estate are pending- example \$200,000 of money and property must be converted into a philanthropic foundation per her wishes via a will with yours truly named executor. I made her this promise should I be the longest liver. Her will would be done according to her wishes: I gave her my word which was all I had then and all I have now. We old marine corp. veterans have a saying- Semper Fi which means in short, always faithful. We wouldn't leave one behind in Vietnam and I am not about to breach the trust placed in me by my cousin Ruth Harkless Lewis, may she rest in peace. Now you may help me by placing in the mail an affidavit notarized with attached letters from the party who notified you of Ms. Lewis's death initially and all other pertinent information pertaining thereto. As always thank you for your cooperation and concerns.

Sincerely,



Alonzo Austin  
1321 Oliver-Carlis Rd.  
Tuskegee, AL 36083



AUG 25 2003

JUL 25 2005  
July 22, 2005  
ALONZO Austin  
1321 Oliver Carlis Rd.  
Tuskegee, AL. 36083

Via Certified Mail  
ATTN: Mr. Beave  
MODERN WOODSMAN OF AMERICA  
Legal Department  
1701 1st Avenue  
Rock Island IL. 61201

Dear, MR. Beave:

Re: Ruth Harkless Lewis - Certificate 6737108  
(Stolen)

"With ALL due respect." Reference 1st  
Paragraph stating and I quote "you have  
refused to complete and return the necessary  
forms in order to settle this claim."

This is incorrect as a matter of fact  
I've been trying to ascertain the  
whereabouts of the actual Certificate  
the WILLS plural, Safe Deposit Box  
Containing Mrs. Lewis Valuable, as well as  
Property Deeds, access to Banking accounts  
Insurance proceeds and Tax Records and  
as of this date the County and State  
official have refused to help locate same.

Moreover, I am on record as of Now  
Claiming said Annuity, Certificate # 6737108.

I am also opposed to sending said proceeds  
to The State of ALABAMA Treasures office  
For the reasons stated above. Sincerely, Alonzo

EXHIBIT

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Send  
 copy kept  
 for  
 record.

AUGUST 3, 2005

Alonzo Austin

1321 Oliver-Carroll Rd.

Wiskegee, MI, 36083

ATTN: Linda J. Kendall

LEGAL DEPARTMENT  
 MODERN WOODSMAN OF AMERICA

1701 1st Avenue

P.O. Box 2005

Rock Island #L 61204-2005

via certified mail

Dear: Ms. Kendall;

Re: Ruth Harkless Lewis-Certificate # 6737108

Reported Stolen by Agent and Beneficiary -  
 EXC: ALONZO Austin, (Please help me??)  
 HELP YOU!!!

Your Letter dated JULY 25, 2005 WAS  
 WELL received. Thanks For your Concerns.  
 However, I cannot in good conscious  
 sign this Waiver as it is written  
 perhaps if it is modified, but only  
 after the Cause of Death has truly  
 been Legally established along with  
 the date and place.

Finally, because of the stated reasons  
 given above I am unable to fill  
 out the "Claimant's Statement"  
 as required Prompting Payments of  
 Certificate Proceeds. In Short AN  
 INVESTIGATION must be conducted which will  
 delay further these Proceeds. which is  
 the real Reason for the delay for Settler

NOTE:

AS I am without the Necessary Information  
 to fill out forms).

Sincerely, Alonzo

EXHIBIT

22

7/6/05 Mr. Austin  
called. He said he  
would not sign the  
forms & told me to  
pay it to the state.  
XX

July 15, 2005

Mr. Alonzo Austin  
1321 Oliver Carlis Road  
Tuskegee, AL 36083

Re: Ruth Harkless Lewis -- Certificate 6737108

Dear Mr. Austin:

Please be advised that the death claim payable under the above annuity certificate has been referred to the Legal Department for attention. You have refused to complete and return the necessary forms in order to settle this claim.

Since you have not provided us with the required forms to process this claim, we have no alternative but to treat the proceeds as unclaimed property according to the Alabama Unclaimed Property Act and pay the unclaimed funds to the State Treasurer's Office unless we hear from you within 30 days of the date of this letter.

Sincerely,

Linda J. Kendall, FLMI  
Legal Secretary

EXHIBIT

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